

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

76-1485

To Be Argued by
Joseph R. Mathews

In The
United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-- vs. --

JUNE BUFFHAM,

Defendant-Appellant.

On Appeal from the Judgment of the United States District
Court For the Northern District of New York

BRIEF FOR PLAINTIFF - APPELLEE,
United States of America

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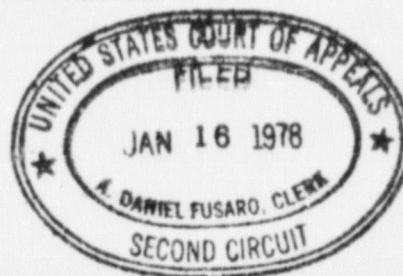


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District Court for the Northern
District of New York

BRIEF FOR PLAINTIFF - APPELLEE
United States of America

STATEMENT OF ISSUES

1. Did the Court's participation in the examination of witnesses in this case result in a denial of appellant's right to a fair trial?
2. Should the conviction of Appellant be reversed in the interest of justice?

STATEMENT OF THE CASE

The Appellant, June A. Buffham, was indicted by a federal grand jury sitting in Auburn, New York on September 30, 1975, along with co-defendants Kenneth R. Van Graafeiland, Allan F. Glassford and Frank J. Gallo. Mrs. Buffham was charged in Indictment No. 75-CR-112 with the crimes of Conspiracy in violation of 18 U.S.C. §371 (Count I), Misapplication of Bank Funds in violation of 18 U.S.C. §656 (Count II) and Making False Entries in the Books of the Bank in violation of 18 U.S.C. §1015 (Count III). Co-defendant Kenneth Van Graafeiland was identically charged. Co-defendants Frank J. Gallo and Allan F. Glassford were charged with Conspiracy to Misapply Bank Funds in violation of 18 U.S.C. §371 (Count I), the Aiding and Abetting of the Misapplication of Bank Funds in violation of 18 U.S.C. §2 (Count II) and the Aiding and Abetting of the False Entries in the Books of the Bank's Records in violation of 18 U.S.C. §2 (Count III). Defendants Van Graafeiland and Glassford each pled guilty to Count II of the Indictment on January 9, 1976. Van Graafeiland was sentenced to four years imprisonment on July 28, 1976 and Glassford was sentenced to four years imprisonment on August 23, 1976.

The case involving the appellant was tried with co-defendant Gallo before a jury in the United States District Court, Northern District of New York, in Auburn, New York, beginning on June 30, 1976, before the Honorable Lloyd F. Mac Mahon, United States District Judge. On July 8, 1976, Frank J. Gallo was acquitted on all three counts in the Indictment. June A. Buffham was acquitted on Count I but convicted on Counts II and III of the Indictment. Appellant was sentenced on September 16, 1976, to probation for a period of two years.

STATEMENT OF FACTS

Kenneth Van Graafeiland was manager of a branch bank for Lincoln First Bank Central when he misappropriated \$1,014,000.00 from the bank. Mr. Van Graafeiland maintained that he never received any of the money and that \$940,000.00 went to Allan Glassford (Ad.p.236) and the rest to one other individual, Robert Capria. Appellant worked for Mr. Van Graafeiland at the bank as a teller and receptionist (Ad.p. 254). In May, 1974, just after the auditors had left the bank, Van Graafeiland confided in Mrs. Buffham that he was covering up loans to Glassford by making the auditors believe that the money had been advanced to Oswego County Savings Bank through currency advance slips. (Tr.p.258). Van Graafeiland's testimony further shows that Mrs. Buffham became actively involved in the scheme herself when she prevented the main office

of the bank from discovering two illegal loans to Glassford in the amount of \$28,000.00 and \$30,000.00 by making up internal transfers between August, 1974 and December, 1974. (Ad.pp. 264-66). It was also Van Graafeiland's testimony that Mrs. Buffham personally delivered \$7,000.00 to Glassford outside the bank (Ad.p. 263-64), replaced the currency advance slips that were necessary to prevent the auditors from becoming aware that there was in fact no transfer of any money to another bank (Ad.pp.267-68) and she continued to advise the auditors from 1971 through 1974 that a non-existent passbook was out for updating involving a loan to Glassford (Tr.p.260).

Further elaboration on the facts of this case, including testimony of Allan Glassford, is set forth in the body of this brief. Otherwise the statement of the facts included in the brief filed on behalf of the defendant Buffham (Brief p.3-5) is acceptable to the United States to the extent it summarizes the testimony of most of the witnesses at trial.

All references to "Ad." are to the Addendum to this brief containing additional pages of the record which the government feels should be included. Each page number refers to the corresponding page of the trial record.

All references to "Tr." are to the Appendix filed by the Appellant. Each page number refers to the corresponding page of the trial record.

POINT I - THE COURT'S PARTICIPATION IN THE EXAMINATION
OF WITNESSES DID NOT DEPRIVE APPELLANT OF A
FAIR TRIAL

A trial judge enjoys the prerogative, which at times rises to the standard of a duty, to elicit those facts which he feels are necessary for a clear presentation of the issues. United States v. Brandt, 196 F.2d 653 (2d Cir. 1952). After all, the goal of a trial is the development of facts and the systematic, clear presentation of those facts to a jury so that it may pass upon the merits of the case.

Appellant asserts that the involvement of the trial judge in the elicitation of the facts of this case resulted in a denial to the defendant of her right to a fair trial. The judge's examination did not result in reversible error. United States v. Cuevas, 510 F.2d 848 (2d Cir. 1975); United States v. Curcio, 279 F.2d 681 (2d Cir. 1960); cert. denied, 364 U.S. 824, 81 S.Ct. 59, 5 L.Ed.2d 52(1960); United States v. De Fillo, 257 F.2d 835 (2d Cir. 1958); cert. denied 359 U.S. 915, 79 S.Ct. 591, 3 L.Ed.2d 577(1959); United States v. Aaron, 190 F.2d 144 (2d Cir. 1951); United States v. Cox, 277 F.2d 302 (2d Cir. 1960).

Appellant cites various pages in the trial record where the trial judge interceded and provided instruction or participated in the examination of witnesses. (Brief p.6). A review of these instances will illustrate they each fall well within the parameters of the Court's discretion.

Initially the appellant points out the Court's request for brevity in the prosecutor's opening statement (Tr.p.26) and his questions to a witness concerning a chart being placed into evidence (Tr.pp.41-42) as contributing to a cumulative showing of prejudice and partiality towards the prosecution's case. (Brief pp.6-7). As appellant point out, the Court has an active duty to see that the trial is fairly conducted and that the Court is more than a moderator or umpire. United States v. Cuevas, supra. (Brief p. 6). There is no requirement that the Court be a passive moderator or a mere spectator. Pariser v. City of New York, 146 F.2d 431 (2d Cir. 1945).

Appellant further complains the Court assisted in the prosecution of the case by putting several questions to the two chief prosecution witnesses, Allan Glassford and Kenneth Van Graafeiland (Brief p.6). An examination of these instances will show that again, the Court's conduct fell within reasonable bounds. United States v. De Fillo, supra.

Some of the Court's questions were necessary to clarify the facts surrounding conversations about which Mr. Glassford and Mr. Van Graafeiland were testifying. One question put by the Court to Mr. Glassford concerned the time a conversation had taken place (Tr.p.79); another about where a conversation had taken place (Tr.p.83). The Court also attempted to elicit the facts of the conversation rather than to permit the witness to testify generally as to what was discussed,

THE COURT: Tell us what she said, and what you said not that it was discussed. What did they say, and what did you say, as best you can remember? (Tr.p.87).

The Court repeated this request to the same witness, Mr. Glassford, when he was testifying on redirect. (Tr.p. 203).

The Court did the same with Mr. Van Graafeiland with respect to clarifying testimony,

THE COURT: Can you give us the conversation? What did you say, and what did she say, and not your conclusions about it. Do you think you can tell us the words as best as you can remember them? The words out of her mouth and the words out of yours? (Tr.p.255).

In other instances the Court simply requested more specific information from the witnesses, Mr. Glassford and Mr. Van Graafeiland. The questions put to Mr. Glassford concerned a loan he had received from Mr. Gallo (Tr.p.93-94) and a meeting between Gallo, Glassford and Van Graafeiland (Tr.p.96-98). For example, the Court asked Glassford such questions as "Where and when?" (Tr.p. 96), "What was the purpose" (Tr.p.96), and "What do you mean by your situation, and what did you tell him? Don't leave us to guess. We want to know what happened here? What did you tell him?" (Tr.p.98).

The Court's questioning of Mr. Van Graafeiland concerned: the existence of a note for a loan disbursement by Mr. Van Graafeiland to Mr. Glassford and Mr. Gager (Tr.p.233); a conversation with Mr. Gallo (Tr.pp.241-242); questions about the advance slip showing money was loaned

to Oswego County Savings Bank (Tr.p.257); and what Mrs. Buffham had said concerning the auditor's questions about an advance slip (Tr.pp.258-260). The Court continued with questions concerning Mr. Van Graafeiland's understanding of what he was doing when he was continuously making advances to Glassford (Tr.pp.275-276,319,321,330-331).

All of these questions were properly asked. Prejudice does not arise merely because the questions came from the judge rather than the attorneys. United States v. De Fillo, supra at 839. None of the testimony, except for Mr. Van Graafeiland's testimony as to what Mrs. Buffham said during the auditor's visit (Tr.pp.258-260), even concerned the appellant Buffham. Even in this specific instance regarding Van Graafeiland's testimony concerning Buffham during the audit, a review of the Court's comments contains such questions as,

THE COURT: What did she/Buffham/ say the auditor said about the slip that was in the box? (Tr.p.258).

and

THE COURT: Just a minute. What, did she say when you told her about this. (Tr.p.259).

These questions were proper examination and did not indicate partiality to the government's witnesses. The Court's questions were basically for clarification and assistance to the jury in understanding the evidence. It is submitted that the Court's questions not only clarified facts but aided both parties equally as well as the jurors. The Court has a duty to elicit those facts which he feels are

necessary to present the issues clearly to the jury. Pariser v. City of New York, supra; United States v. Cox, supra.

Finally appellant states that Court's participation in the cross-examination of defendant Buffham contributed to creating an impression for the jury of prejudice and partiality (Brief p.7). We submit that the Court's questions did not compromise the defendant's presumption of innocence. United States v. Brandt, supra at 656.

The Court's questioning of the defendant was not so severe that it gave the appearance of being motivated by a partisan purpose. United States v. Nazzaro, 472 F.2d 302 (2d Cir. 1973). The Court's actions were in no way aimed at testing the plausibility of defendant's version of the transactions. United States v. Grunberger, 431 F.2d 1062 (2d Cir.1970). In reversing the conviction on appeal in Grunberger, it is noted that the trial judge there was more "patient and moderate" with the prosecution's witness than with the witnesses of the defendant so that the jury might have received the impression that the Court believed the government's witnesses. A reading of the record in the present case readily shows that the Court was a good deal more "patient and moderate" with the defendant's witnesses than the prosecutions', so that it cannot be said that the jury received an unfavorable impression with respect to witnesses of the defense.

When testimony is unclear and in need of clarification, it is appropriate for the Court to make inquiry. United States v. Bernstein, 533 F.2d 775, 795-796, (2d Cir. 1976). Beginning on page 985 of the record, the Court asked the following question to a lengthy answer that the appellant had given on cross-examination:

THE COURT: What do you mean, send them to Syracuse? Enter the loans as outstanding loans on the books of the bank? Is that what you mean. (Ad.pp.985-986).

That question, it is submitted, is the beginning of several questions asked by the Court designed to clarify the defendant's testimony. The judge has a duty to aid the jury in comprehending complicated testimony. United States v. Tyminski, 418 F.2d 1060 (2d Cir. 1969), cert. denied 397 U.S. 1075 (1970). The questioning was not so extensive as to deny appellant a fair trial in an adversarial setting. United States v. Tyminski, supra.

Appellant is concerned about the number of questions asked by the Court throughout the trial. (Brief p.6-7). However,

Appellants' arguments do not gain strength from the customary statistical resume of numbers of questions. If all the questions are elicited for purposes recognized as proper either on direct or cross-examination prejudice does not arise merely because the questions are asked by the court. /citations omitted/

United States v. De Fillo, supra at 839. Even a needlessly great number of questions asked by the judge does not amount to error per se. United States v. Aaron, supra at 146.

The Court included an instruction to the jury that they were not to conclude from any of the questions the Court may have asked that the Court had any opinion as to whether the defendant was guilty. (Tr.p.1166). In most circumstances any damaging impression which may have been created by the Court's examination of any witness can be mitigated with a jury instruction which emphasizes that comments or questions by the court are not to be construed as expressing any opinion or view on the part of the court. United States v. Cruz, 455 F.2d 184, 185 (2d Cir. 1972) cert. denied, 406 U.S. 918 (1972).

It is submitted that if there had been any chance that the Court's examination of the defendant or of any other witness may have influenced the jury unjustly, this charge lessened the possibility to a nullity. In addition, in considering the record as a whole (United States v. D'Anna, 450 F.2d 1241,1206 (2d Cir 1971)), it is possible to see that the Court's examination of the witnesses was not limited in scope or attitude to one side or the other. The Court questioned witnesses for both sides vigorously. (Tr.pp.275-276, 319,321,330-331,987-988). It is submitted that the trial judge's questions were proper and in keeping with his role and did not result in a denial of appellant's right to a fair trial.

POINT II - THE CONVICTION OF APPELLANT RESULTED FROM
A FAIR TRIAL AND SHOULD NOT BE REVERSED.

Appellant cites no cases in support of her second contention. (Brief p.9). The crimes of which the appellant was convicted were Title 18 United States Code, Section 656 and Title 18 United States Code, Section 1005. Under the second count of the Indictment, Title 18 U.S.C. §656, the government had to prove that the defendant was an employee of the bank, that the bank was a federally insured bank, that the defendant wilfully misapplied money of the bank and that she acted with intent to injure or defraud the bank. Under the third count of the Indictment, Title 18 U.S.C. §1005, the government had to prove that a false entry was made in a book, report or statement of the bank with the intent to injure or defraud the bank. No where is it mentioned that it must be shown that the appellant derived some benefit from the scheme. Nor must it be shown that she had a motive to participate in the scheme. The crimes that the defendant was convicted of do not require that the defendant have a motive or that she benefit in any way from the fraud perpetrated upon the bank.

While it is not necessary, the jury could assume that the defendant did have a motive or did benefit, although not monetarily. One may assume her continued association, companionship and friendship with Allan Glassford and Frank Gallo (Ad .pp.723-725) may be motive or benefit enough. There was an incident where Mrs. Buffham wanted to buy Mr. Glassford's car and she remarked

that he had better sell it to her or she would "...blow the whole thing at the bank...." (Ad.pp.82-83).

Lastly appellant contends that she acted without guilty knowledge or intent. However the jury could infer she had guilty knowledge or intent from the facts presented by the prosecution. For example, Mr. Van Graafeiland stated he had talked with Mrs. Buffham in May, 1974, after the auditors had left the bank, about a fraudulent currency advance slip totalling \$520,000.00. He indicated to her on that occasion that the Oswego County Savings Bank had not received that amount of money but was instead used to cover up the indebtedness of Mr. Glassford. (Tr.pp. 257-259).

There also was the matter of a passbook concealing a fraudulent loan to Glassford that Van Graafeiland said Mrs. Buffham continually told the auditors was out of the office for updating when there never was in fact a passbook. (Tr.p.260).

In addition, according to Van Graafeiland, Mrs. Buffham actively participated in covering up two loans to Glassford (Ad.pp.264-266) and inserted fraudulent currency advance slips in teller's drawer's (Ad.p.267) after she was told by Van Graafeiland that there was no such transfer of money.

Allan Glassford said that at a restaurant in 1973 he discussed his indebtedness to the bank of \$600,000.00 with her, also that Van Graafeiland was considering taking his life because of it and that she was worried about her job. (Ad.pp.81-82). Mr. Glassford also related an incident in which Mrs. Buffham allegedly said that if he did not sell her his car that Mrs. Buffham would "...blow the whole thing at the bank..." (Tr.p.83). There was also mention by Glassford of a conversation in which Mrs. Buffham said that Van Graafeiland and her would spend half the rest of their lives in jail if it was not straightened out (Ad.p.84). They also discussed falsified records at the bank and the holding of loan documents. (Tr.p.85). Buffham was said to have delivered money to Glassford outside the bank in a phone booth. (Tr.p.86). There were additional comments of Mrs. Buffham related by Glassford in the record that show her involvement in the fraud. (Ad.pp. 87-88). The testimony of these witnesses above, without any other evidence including exhibits, was more than sufficient for the jury to infer guilty knowledge and intent. The jury found the appellant guilty after a full and fair hearing and it is submitted that there is no basis to reverse the conviction as she requests.

CONCLUSION

The conviction of the appellant should be affirmed.

Respectfully submitted,

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ADDENDUM

ADDENDUM - Excerpts from Transcript of Testimony.

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A Yes.

Q Did you discuss anything with her at that time with regard to your loans?

MR. TISDELL: I would like to ask when this meeting took place?

THE COURT: Yes, please fix the time and the place, and what was said, and who was there.

BY MR. MATTHEWS:

Q Did you have a meeting with Mrs. Buffham at Pal Joey's?

A Yes, I did.

Q And when was that?

A I believe it was in 1973, say the fall of the year.

Q Was anyone else present?

A No, they weren't.

Q Did you discuss the matter of your loan with Mrs. Buffham at that time?

A Yes, I did.

Q And would you please explain?

A Well, the indebtedness to the bank, I then understood was around \$600,000.00. It was told to me. I discussed it with Mrs. Buffham, and she told me at the time that Mr. Van Graafeiland was in such a frame of mind that he was considering taking his life, and jumping in the river, as he put it, and something had to be done about it.

Q Do you remember anything else she said at that time?

A Well, just that there was documents that she was holding in her cash drawer, and she was instructed to do so by Mr. Van Graafeiland. She was worried about that, naturally and worried about her job.

Q Did she say anything with respect to how Mr. Van Graafeiland was handling these loans to you?

A No, she didn't.

Q Was there an incident with the car, Mr. Glassford?

A Yes. I had, at the time, I had a 1973 Cadillac, and I was going to get rid of it. And Mrs. Buffham wanted to buy it. She had recked hers at the time, and I was going to sell it to her, and I didn't. Mr. Van Graafeiland suggested a couple of times that I should sell it to her and if Mrs. Buffham wanted to buy the car, and she called the house a couple times and asked when I would sell it to her, and she wanted the car, and she was holding off buying another one.

Q Anything else with regard to that? Would you please give the time of that conversation?

A Well, this was throughout the Fall of 1973, I believe it was.

Q That is all with respect to that car incident?

A Well, no. The remark was made one day that you

ADDENDUM - Excerpts from Transcript of Testimony.

better sell me that car or I will blow the whole thing at the bank, and I took it jokingly, really.

MR. GERBER: Would you tell me when that occurred?

How about a foundation of when that occurred, Your Honor?

BY MR. MATTHEWS:

Q When did that occur?

A That would be the Fall of 1973.

THE COURT: Where?

BY MR. MATTHEWS:

Q Where did it take place?

A Well, it was a telephone conversation.

THE COURT: Where were you, and where was she?

THE WITNESS: I was home, I believe.

I couldn't tell you where Mrs. Buffham was.

BY MR. MATTHEWS:

Q Did you have any conversation with Mrs. Buffham with respect to what would happen if this matter wasn't straightened out?

A Yes, she --

Q Please explain the time, and where it took place?

A This would still be well into 1974, I imagine, that the indebtedness got so great, supposedly that she

informed me that if it wasn't straightened out that Van Graafeiland and I would spend half the rest of our lives in jail, and she was sorry that she was mixed up in the whole thing.

Q Did Mr. Van Graafeiland take a vacation in 1974, that you know of?

A Yes, he did.

Q And what did you do when Mr. Van Graafeiland took that vacation, if anything?

A I was instructed by Mr. Van Graafeiland to call the bank, Oswego Lincoln Bank every morning, and talk to Mrs. Buffham, and if auditors were there, I would have to go down there immediately and sign some papers so the shortages could be covered.

Q Did she mention anything with respect to wishing that the boss was back in the office, at that time?

A I didn't hear that.

Q Did she mention anything with respect to wishing that the boss was back at the office, at that time?

A Yes, she wished he would get back in a hurry. She was holding checks in her drawer, and moving them around, day to day.

Q Did she say anything with respect to monies transferred to Oswego Bank?

A At one point I was told, and I can't be sure if

A Well, Mr. Gallo was supposedly helping me get some money to straighten this situation out at the bank. My understanding, from the Teamster's Union -- this didn't occur, and Mrs. Buffham was at the restaurant quite often, and it was discussed between her and I, when I was there --

THE COURT: Tell us what she said, and what you said not that it was discussed. What did they say, and what did you say, as best you can remember?

THE WITNESS: Well, I asked her how things were going at the bank, and she said they were in bad shape, that she didn't know from day to day if Mr. Van Graafeiland was going to come to work, or what he was going to do to himself, and if this wasn't straightened out pretty soon, she would be in trouble, and he would lose his job, and we would both go to jail, and that is about it.

THE COURT: What, if anything, did she say about Mr. Gallo?

THE WITNESS: Just that she knew of the situation that Mr. Gallo was trying to get me the money to straighten the indebtedness out at the bank.

BY MR. MATTHEWS:

Q Did she say anything with respect to the phoney stuff

in her drawer?

A Yes, on many occasions.

Q And what did she say?

A Like I said, that she was carrying -- he was instructing her to hold, to my knowledge, cashier checks or my personal checks in her drawer, and move them around from day to day to cover the shortages.

Q And did she ever say what would happen if the auditors came in?

A Yes, he would lose his job, and of course, there would be charges, and everyone would be in trouble.

Q All right, Mr. Glassford, do you know Mr. Frank Gallo?

A Yes, I do.

Q And is Mr. Gallo sitting in this Courtroom?

A Yes, he is.

Q And would you point him out?

A Mr. Gallo has a black suit on.

MR. MATTHEWS: Let the record show

that the witness has identified the Defendant.

BY MR. MATTHEWS:

Q When did you first meet Mr. Gallo?

A I believe that I first met him in 1972; the latter part of 1971.

Q Did you eventually agree to do anything for Mr. Gallo?

A Yes, I did.

the examiners that the book was out for updating.

Q And this occurred in 1971?

A That's correct.

Q What did the indebtedness of Mr. Glassford reach then?

A It was \$940,000.00.

Q And there were all off the books?

A All with the exception of a non-existent passbook loan for \$24,000.00.

Q And there is not loan documentation involved?

A No, there was not.

Q Did Mr. Glassford make any payment at all to you from the time that you were transferred from Oswego in 1971 until December of 1974?

A No, he did not.

Q Was Mr. Glassford working at this time?

A Yes, I believe that he opened a pole barn construction company.

Q How did you expect to be repaid these loans, Mr. Van Graafeiland?

A On numerous occasions he gave me stories telling me that he either had friends that were going to lend him the money, people were going to assist him in repaying the money, and for a period of about a year between 1972 and mid-1973 he stated that he was working on a job for Pyramid Mall construction Corporation

in one day. Consequently I told him he would have to take the check for \$25,000.00.

Again, in each instance this was supposed to assist Mr. Glassford in obtaining the funds from the Teamster's to repay the indebtedness that he had with Lincoln Bank.

Q Mr. Van Graafeiland, do you know Mrs. Buffham?

A Yes, I do.

Q And is she in the Courtroom today?

A Yes, she is.

Q And would you please point her out?

A The lady sitting over there (Indicating).

Q And what is she wearing?

A A checked --

MR. MATTHEWS: Let the record show that the witness has identified the Defendant, Mrs. Buffham.

BY MR. MATTHEWS:

Q Was she working at Lincoln Bank when you resigned, Mr. Van Graafeiland?

A Yes, she was.

Q And was it a teller's job?

A Not a teller, but also a receptionist.

Q And Mr. Van Graafeiland, did you ever discuss your relationship with Mr. Glassford with Mrs. Buffham?

Mr. Gallo. He wanted to discuss with Mr. Glassford and myself the loan repayment to the bank. I told him that I would be unable to come to the meeting, but that I asked June to go. She did go, to the best of my knowledge.

She came back and told me that they just further verified the fact that this money would be forthcoming from the Teamster's.

Q Did Mrs. Buffham ever talk to Mr. Gallo, at your request?

A Just that one time -- well, on the phone, but that one time in particular she went to the restaurant and talked with him.

Q Did Mrs. Buffham ever give you any messages from Mr. Glassford or Mr. Gallo?

A Yes, on numerous occasions.

Q Could you explain when?

A Well, almost daily, or at least every other day from May of 1974 -- before that there were messages, but we never got into any details. After May of 1974, when I knew that she was aware, or after I had told her of my involvement with Mr. Glassford, and she knew of Mr. Gallo's involvement with Mr. Glassford, she would frequently relay messages. In one particular case I can remember when Mr. Glassford had called her

ADDENDUM — Excerpts from Transcript of Testimony.

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as opposed to calling me. He did not feel that he could get any more money from me and he needed, I believe, \$7,000.00 and he talked to her. She, in turn, talked to me, and I made the check out, and she took it out to him. He would not come in the bank on that particular occasion.

Q And who was it that Mr. Glassford requested this money from?

A From me.

Q And that conversation was related to you, through Mrs. Buffham?

A That is correct.

Q And he had called her, initially?

A That is correct.

Q And then what happened with respect to this money?

A I gave her the check for Mr. Glassford, and then she delivered it, or she took it out of the bank and gave it to him.

Q And when did this take place?

A I would believe it was in September of 1974.

Q Now, were there any loans to Glassford that Mrs. Buffham was involved in?

A Only to the extent that I had two loans, one in the amount of \$30,000.00 and one in the amount of \$28,000.00. They were both notes that he had signed.

We were making up internal transfers, or I had made up internal transfers indicating that I had a commercial note in process. She handled them when I went on vacation, in August of 1974. Simply, by updating these approximately every seven or five days, and from that time until December of 1974, either she or I updated them almost weekly.

Q These two loans; are you referring to these loans as loans in process?

A Loans in process.

Q What would she have to do with them?

A Make up the new internal transfer to wipe out the previous internal transfer.

Q And is that a normal banking procedure?

A No, it is not.

Q And would that cover the previous loan?

A That would also wipe out the previous loan, and then, in fact, show to the bank that there was a new loan in process.

Q If Mrs. Buffham didn't take this action, with respect to these two loans, if she didn't do it, what would occur?

A The auditors would question it. The fact that the loans had not been sent down to Syracuse, or the fact that they had two outstanding internal transfers for a

total of \$58,000.00, and they would want to know why.

Q And an investigation would have been launched?

A That is correct.

Q And this whole scheme would have been discovered?

A That is correct.

Q How often would Mrs. Buffham have to take that action with respect to these two loans?

A About every five to seven days.

Q These were the other two loans that Mrs. Buffham was rolling over at that time?

A That is correct.

Q Now, Mrs. Buffham did not do this on her own, is that correct?

A No, she did not.

Q The first time you told her to do it?

A That is correct.

Q And after that?

A I asked her to do it.

Q Were you asking her to do it every time?

A Yes, sir.

Q Did she do this for any other customer, besides Mr. Glassford?

A No, she did not.

Q All right. Now, you took a vacation in 1974, Mr. Van Graafeiland, is that correct?

ADDENDUM — Excerpts from Transcript of Testimony.

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A That is correct.

Q For how long?

A Two weeks.

Q What did you do with regard to these internal transfers, the loan in process?

A The internal transfers, she handled while I was gone. The installment loans that were in process, I had updated just prior to the time that I left so that there was no action necessary.

The currency advance slips I typed up a sufficient number of them updating them daily, and asked that they insert them in the teller's drawer. Also, taking out the old one.

Q This currency advance slip, were they prepared by you in advance?

A They were prepared by me.

Q And what action did she have to take with regard to those?

A Just simply put the new one in the drawer and remove the old one.

Q Was it necessary to transfer currency advance slips every day?

A I felt it was.

Q And what would occur if they were not changed?

A If there was no auditing, nothing would have happened.

If there had been a audit, if auditors, if they were two or three days old, certainly would have questioned why they were still in the drawer. I felt that if they were updated, the auditors were not likely to question the slip, itself.

Q How much money did the currency advance slips reflect going to Oswego County?

A At the end it was \$675,000.00.

Q Mr. Van Graafeiland, do you recall any other conversations with Mrs. Buffham with regard to your involvement with Mr. Glassford, other than those that you have mentioned?

A No, I do not.

MR. MATTHEWS: Thank you.

CROSS EXAMINATION

BY MR. GERBER:

Q If the please the Court: Mr. Van Graafeiland, you have been in the banking business some number of years?

A That is correct.

Q And the nature of the business, was it to actively attempt to develop business?

A That is correct.

Q And to give loans to various businessmen over this period of time?

A That is correct.

ADDENDUM — Excerpts from Transcript of Testimony.

Defense - Gallo - Cross

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that respect was correct?

A. Not as far as I am concerned.

Q. Did you have any interest in the Cher-pit Restaurant in December?

A. Pardon me?

Q. Did you have any interest in the Char-pit Restaurant in December '74?

A. Did I have an interest in it?

Q. Yes.

A. No, sir.

Q. Oh, you never mentioned that to Mr. Van Graffiland in a telephone conversation either, right, you never brought that up?

A. The only time I -- I went there for coffee, never mentioned it to anybody.

Q. Okay, fine. Do you remember telling the grand jury that Glassford -- all right, we will drop that question for now, Mr. Gallo.

A. I didn't hear what you said.

Q. We will drop that question. Would Mrs. Buffham ever call the restaurant, would she ever meet Mr. Glassford at your restaurant?

A. She has been there when he has come in, or he has been there when she has come in. Whether it was pre-arranged for them to meet, I don't know, sir.

Defense - Gallo - Cross

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Q. And how often would Mrs. Buffham be in there when Mr. Glassford was in there?

A. I don't know, maybe four or five times.

Q. A total of four or five times?

A. I don't really know, sir, I can't remember. It might have been more, it might have been less.

Q. On Page 234, do you recall testifying before the grand jury, Mr. Gallo:

"Q. Would she meet Glassford at the Casa De Gallo often?

"A. Frequently."

"Q. And this is a year and a half ago?

"A. A year and a half ago, maybe a year and eight months, seven months."

"Q. And what do you mean by frequently?

"A. I don't know, maybe once a week, sometimes twice a week, sometimes twice a month. She brought her mother-in-law in on occasions."

So rather than four or five times, would it be more than that over a year's time? According to the testimony, you testified once a week, twice a week.

A. That is when she comes around, or when she meets Mr. Glassford?

Q. Well, the question is, would she meet Glassford at the Casa De Gallo often, and the answer was frequently.

What do you mean by frequently? Sometimes once a week, twice a week?

A. As I said, half a dozen times, four, five. I really can't remember.

Q. But the year's time --

A. She used to be there quite frequently. She used to stop in once or twice a week.

Q. Did she ever sit and wait for Mr. Glassford to come in?

A. Mr. Glassford used to come up there quite often and say she is coming up, I'll be up in a little while. Run a tab on her. When I get there I will pay it. He never showed up. He had done this many times, so he would be there when she came in, throw a \$20 bill on the bar and tell me, bartender, when that is gone, run a tab on her, and he would leave.

Q. This is for Mrs. Buffham?

A. Yes, sir.

Q. What would happen if he didn't show up?

A. She would be there waiting for him till 1:00 o'clock or so, till we closed up.

Q. Did Mrs. Buffham ever say anything to you about Mr. Glassford's situation at the bank?

A. She never discussed his personal business at the bank, no, sir.

ADDENDUM - Excerpts from Transcript of Testimony.

Buffham, a defendant, cross

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A The only loans I am aware of are the two loans that were taken out in late '74. I believe that is what you are referring to.

Q Yes.

A I don't know of any other loans.

Q And Mr. VanGraffiland came to you with respect to these two loans?

A He was at the new accounts desk. Mr. VanGraffiland brought them up to my desk and put them on the desk.

Q Okay. Now, these two notes were signed by Mr. Glassford?

A Yes, they were.

Q And what did he ask you to do with respect to these two notes?

A Mr. VanGraffiland asked me to hold the two notes at my desk.

Q Okay. And did he tell you to do anything else with respect to the internal transfers?

A At that time there was a duplicate, the third copy of the cashier's check used for the proceeds of those loans. He told me to hold that portion of the cashier's check along with the loans at my desk, that he did not have sufficient documentation to send it to Syracuse. The loans were going to be paid off within a week, and he didn't have the documentation to send them to Syracuse.

THE COURT: What do you mean, send them

ADDENDUM — Excerpts from Transcript of Testimony.

Buffham, a defendant, cross

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to Syracuse? Enter the loans as outstanding loans on the books of the bank? Is that what you mean?

THE WITNESS: That's right.

THE COURT: In other words, he asked you not to enter them on the books of the bank, is that what you are telling me?

THE WITNESS: At that particular time, yes, that is what he told me.

THE COURT: Was that a regular procedure of the bank, or an irregular procedure?

THE WITNESS: It is irregular, but --

THE COURT: Did you know that it was irregular?

THE WITNESS: It had been --

THE COURT: Did you know that it was irregular; yes or no.

THE WITNESS: It was not normal procedure.

THE COURT: Did you know that it was an irregular procedure?

THE WITNESS: Yes.

THE COURT: To make off-the-book loans?

THE WITNESS: I did not know at that time it was off-the-book loans. I assumed that he was going to get the documentation.

THE COURT: Well, you knew they weren't

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